

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

NOT FOR PUBLICATION

JOSE VELEZ,

Plaintiff,

- versus -

CITY OF NEW YORK, DISTRICT  
ATTORNEY CHARLES J. HYNES,  
individually and in his official capacity, ADA  
JANE LUBOWITZ, ADA CAROLINE R.  
DONHAUSER, ADA ANTHEA H. BRUFFEE,  
ADA PHILLIS MINTZ, individually and in  
their official capacities as employees of the City  
of New York who are/were Assistant District  
Attorneys within the Office of the District  
Attorney, County of Kings, DETECTIVE  
THOMAS J. BRESNAHAN, DETECTIVE GIL  
VARGAS, DETECTIVE PATRICIA  
STEVENS, SERGEANT JAMES RUSSO,  
INSPECTOR JACK J. TRABITZ,  
INVESTIGATOR J. HIPPOLYTE,  
JONATHAN DAVID, POLICE OFFICER  
JOHN DOE and VARIOUS JOHN/JANE  
DOES, individually and in their official  
capacities as employees of the City of New  
York who are/were members of the Police  
Department of the City of New York,

Defendants.

ORDER  
11-CV-5527

JOHN GLEESON, United States District Judge:

Jose Velez, currently incarcerated in the Sing Sing Correctional Facility, brings this *pro se* action under 42 U.S.C. § 1983, against various officials of the State and City of New York. Velez, who was convicted after trial in the Supreme Court of New York, Kings County, on five counts of sodomy in the first degree, contends that the defendants violated his constitutional rights by destroying or losing evidence that could have exonerated him. Velez appears to seek vacatur of his convictions, a reduction of his sentence, or a new trial, as well as

money damages, a hearing to determine why evidence was destroyed, an injunction directing defendants to preserve and make available any evidence that still exists, and a declaration that destroying any existing evidence would be unlawful.

Judgment for Velez upon his claims that the defendants unconstitutionally destroyed or lost evidence would necessarily imply the invalidity of his convictions. Thus, in addition to being meritless, *see Arizona v. Youngblood*, 488 U.S. 51 (1988); *California v. Trombetta*, 467 U.S. 479 (1984), they are not cognizable under § 1983, *Heck v. Humphrey*, 512 U.S. 477 (1994); *Preiser v. Rodriguez*, 411 U.S. 475 (1973); *Bivins v. Hudson*, No. 94-3323, 1996 WL 137849, at \*2 (7th Cir. Mar. 19, 1996). Upon Velez's request, I instead construe the claims as a petition for habeas corpus. Velez has already twice petitioned for federal habeas corpus relief, which renders the instant petition a "successive" petition governed by 28 U.S.C. § 2244(b)(3). Because Velez lacks the requisite authorization by the court of appeals to file a successive petition under this provision, his petition is hereby transferred to the court of appeals. *See* 28 U.S.C. § 1631; *Liriano v. United States*, 95 F.3d 119, 123 (2d Cir. 1996). Velez is to submit to the court of appeals any supplemental papers in support of his petition by September 10, 2012.

To the extent Velez asserts any remaining claims, they are dismissed for the reasons stated on the record at oral argument today.

So ordered.

John Gleeson, U.S.D.J.

Dated: August 10, 2012  
Brooklyn, New York